THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

ESSAY

A NONAGENARIAN DISCUSSES LIFE AS A SENIOR CIRCUIT JUDGE

Ruggero J. Aldisert*

A senior circuit judge is often asked: What do you people do? What kind of cases do they assign to you? And how many? Do you decide what cases you want to work on? Where do you work? What kind of staff helps you? Do you have any spare time to do legal writing for the public? How often do you do it? Any books? Any articles? . . . .

These are legitimate questions, and I have decided to take a crack at answering them. I do so both because the literature is somewhat sparse[1] and also because senior judges are, by definition, senior citizens, and often the assumption is that they are doddering and "over the hill." At law schools—heavens to Betsy—both faculty and student law review editors don't truck with what they consider the Geritol set, and the general

*Senior United States Circuit Judge, Chief Judge Emeritus, United States Court of Appeals for the Third Circuit. The author acknowledges the editing assistance of his 2012–13 clerks, Daniel S. Gershwin, J.D., University of Pennsylvania Law School, and Kathleen Jones Covarrubias, J.D., University of Southern California Gould School of Law; and his 2013–14 clerks, David A. Ciarlo, J.D., University of Southern California Gould School of Law, and Fiona Y. Tang, J.D., University of California, Berkeley, School of Law.

1. For a fine exception, see Frederic Block, *Senior Status: An "Active" Senior Judge Corrects Some Common Misunderstandings*, 92 Cornell L. Rev. 533 (2007).

understanding is that senior judges are limited to super-active physical activities like shuffleboard at an AARP conference, hearing an occasional case or two when their schedules permit. Pardon the sexist comment, but this is merely an old wives' tale and it is a glaring misrepresentation of who we senior judges are and what we do.

The brute facts indicate that judges in senior status participate meaningfully in court business and contribute a substantial percentage of the total judicial work undertaken in both the federal courts of appeals and federal district courts.[2] In recent years, judges in senior status were responsible for nearly one-fifth of the total participation in appeals considered by the federal courts of appeals across the country: 18.2 percent of those cases in 2008, 17.8 percent in 2009, 21.6 percent in 2010 21.7 percent in 2011, 20.4 percent in 2012, and 19.9 percent in 2013.[3]

Although this Article will focus on the experiences of senior judges on the federal courts of appeals, senior judges make meaningful contributions to the federal district courts as well. In 2011 senior district judges were responsible for 17.2 percent of the total case terminations in those courts.[4]

I will write primarily about my experiences as part of this cohort, but before I delve too deeply into my own experiences as a senior judge, I believe that it is useful to give a brief description of the statutory authority for the senior judge

---

2. *See* Stephen B. Burbank, S. Jay Plager & Gregory Ablavsky, *Leaving the Bench, 1970-2009: The Choices Federal Judges Make, What Influences Those Choices, and Their Consequences*, 161 U. Pa. L. Rev. 1, 21, 28-29 (2012) [hereinafter *Leaving the Bench*]. Burbank, Plager and Ablavsky draw on data from the Administrative Office of the U.S. Courts (the "AO"), and calculate the percentage of cases in which senior courts of appeals judges participated, including cases in which oral argument was held and cases that were submitted on the briefs. For district courts, the authors calculate the percentage of case terminations for which senior judges were responsible.

3. *See* Administrative Office of the U.S. Courts, *Case Participations in the U.S. Courts of Appeals*, http://www.uscourts.gov/viewer.aspx?doc=/uscourts/Statistics/FederalCourtManagementStatistics/2013/case-participation-summary-pages-june-2013.pdf (June 2013) (accessed Jan. 29, 2014; copy on file with Journal of Appellate Practice and Process).

4. *See* Administrative Office of the U.S. Courts, *Civil Cases and Criminal Defendants Terminated by Senior, Visiting, and Magistrate Judges*, http://www.uscourts.gov/uscourts/Statistics/JudicialFactsAndFigures/2011/Table606.pdf (indicating that in 2011 senior district court judges assisted in 69,765 out of 404,612 civil and criminal cases) (accessed Jan. 29, 2014; copy on file with Journal of Appellate Practice and Process).

position, the process by which one becomes a senior judge, the general duties of senior judges, and the expectations for senior judges in my circuit.

I. THE SENIOR CIRCUIT JUDGE: A GENERAL DESCRIPTION

Until the Judiciary Act of 1869, a federal judge could leave the bench only by resignation or by removal, if he or she was convicted on articles of impeachment.[5] The Judiciary Act of 1869 provided judges with an additional option: retirement with a pension equal to the judge's salary following service of ten years and attainment of the age of seventy.[6] This was followed in 1919 by an additional Act that created yet another option: the position now known as senior judge.[7] At that time, those in the position of senior judge were eligible to function as active judges, receiving the same salary, but with a reduced calendar. Subsequent legislation in 1948 provided that senior judges were eligible for salary increases similar to those authorized for active judges.[8]

Since 1989, the five options for leaving the federal judiciary—removal, resignation, retirement, senior status, and death—have remained about the same. The current statute providing for the office of senior judge, 28 U.S.C. § 371, provides:

> (a) Any justice or judge of the United States appointed to hold office during good behavior may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired.
>
> (b)(1) Any justice or judge of the United States appointed to hold office during good behavior may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during

5. *Leaving the Bench*, *supra* n. 2, at 7.

6. *Id.* (citing Judiciary Act of 1869, ch. 22, § 5, 16 Stat. 44, 45).

7. *Id.* at 8 (citing Act of Feb. 25, 1919, ch. 29, § 6, 40 Stat. 1156, 1157–58).

8. *Id.* at 10 (citing Act of June 25, 1948, ch. 646, §§ 294, 371, 372, 62 Stat. 869, 901, 903–04).

> the remainder of his or her lifetime, continue to receive the salary of the office if he or she meets the requirements of subsection (e).
>
> (c) The age and service requirements for retirement under this section are as follows:

Attained age:	Years of service:
65	15
66	14
67	13
68	12
69	11
70	10[9]

The age and service requirements for retirement under § 371 have come to be known as the "Rule of 80." By way of example, a judge who is sixty-five must have fifteen years of service before becoming eligible to take senior status. A judge who is seventy need have only ten.[10] In short, once federal judges satisfy the Rule of 80, they have three choices. They can choose to (1) continue in active service, (2) officially retire and receive annuities for life equal to their salaries at retirement, or (3) take senior status.[11]

When a judge retires, he or she receives as a pension the last salary received while an active judge. Compensation of senior judges is much different. If and when active judges' salaries are increased, senior judges' compensation is also increased. Eligibility for these pay increases, however, requires that they perform a minimum workload certified by the circuit chief judge and the Chief Justice of the United States. Moreover, judges in senior status continue to be eligible to participate in insurance and survivor-annuity programs.[12]

The remainder of this essay will focus on judges, like me, who have decided to retire into senior status upon satisfaction of

---

9. 28 U.S.C § 371 (available at http://uscode.house.gov).

10. 28 U.S.C. § 371(c).

11. For a discussion of the factors that may contribute to a judge's decision, see generally Stephen J. Choi, Mitu Gulati & Eric A. Posner, *The Law and Policy of Judicial Retirement: An Empirical Study*, 42 J. Legal Stud. 111 (2013).

12. For more on this topic see *Leaving the Bench*, *supra* n. 2, at 31–35.

the Rule of 80. As I will explain, this "retirement" is in name only; it looks very little like the retirement known to most Americans.

Many circuit judges take senior status within a few years of turning sixty-five, the minimum age in the group being sixty-five, the maximum age being eighty-four, and the average and median ages both being sixty-eight.[13] These newcomers or "young" judges must be compared with old geezers like me—I turned ninety-four in November 2013, served eighteen years as an active judge from July 25, 1968 until December 31, 1986, and have served as a senior judge thereafter. Seldom does a judge serve far longer as a senior judge than as an active judge, and I confess that my longevity is a remarkable exception. It has, in any event, given me the perfect longitudinal perspective from which to write this essay.

II. SENIOR JUDGES IN THE REGIONAL CIRCUITS: A STATISTICAL SNAPSHOT

On my court, there are twelve senior judges, and I am the most senior of this illustrious group, both in terms of age and years of service. It is interesting to note that courts have quite different ratios of active to senior judges. Table 1 shows the ratios on the courts of appeals for the twelve-month period ending June 30, 2013.

Table 1
Senior Judges—All Circuits[14]

Circuit	Total Appeals	Active Judges Authorized	Sitting Senior Judges
D.C.	1,137	11	6
First	1,562	6	4
Second	5,186	13	10

13. *See id.* at 21.

14. *See* Administrative Office of the U.S. Courts, *U.S. Court of Appeals Summary—12 Month Period Ending June 30, 2013*, http://www.uscourts.gov/viewer.aspx?doc=/uscourts/Statistics/FederalCourtManagementStatistics/2013/appeals-fcms-summary-pages-june-2013.pdf [hereinafter *Court of Appeals Summary—2013*] (accessed Jan. 29, 2014; copy on file with Journal of Appellate Practice and Process).

Table 1 Senior Judges—All Circuits (continued)			
Third	3,859	14	11
Fourth	5,064	15	1
Fifth	7,401	17	7
Sixth	5,088	16	8
Seventh	2,909	11	4
Eighth	2,943	11	5
Ninth	12,669	29	17
Tenth	2,125	12	10
Eleventh	6,417	12	7
TOTAL	56,360	167	90

It must be emphasized that the number of senior judges is not based on any authorized action from on high, because taking senior status is the voluntary action of the individual judge, and this in turn depends on the tradition of the particular court of appeals. The senior judges on each court with the most years of judicial service to that court are shown in Table 2.

Table 2 Longest-Serving Senior Circuit Judges		
Circuit	**Judge**	**Service Began**
D.C.	Harry Thomas Edwards	02-20-1980
First	Bruce M. Selya	10-14-1986
Second	Amalya Lyle Kearse, Jon O. Newman	06-21-1979
Third	Ruggero J. Aldisert	07-29-1968
Fourth	Clyde H. Hamilton	07-22-1991
Fifth	Thomas M. Reavley	07-13-1979
Sixth	Damon J. Keith	10-21-1977
Seventh	William J. Bauer	12-20-1974
Eighth	Myron H. Bright	06-07-1968
Ninth	Alfred T. Goodwin	11-30-1971
Tenth	William J. Holloway, Jr.	09-16-1968
Eleventh	James Clinkscales Hill	05-21-1976

It should be noted that on four of the federal courts of appeals, the judge with the most years of service remains on

active status: Judge Torruella of the First Circuit, Judge Wilkinson of the Fourth Circuit, Judge King of the Fifth Circuit (who received her commission on the same day as Judge Reavley), and Judge Tjoflat of the Eleventh Circuit.

III. THE SENIOR JUDGE EXPERIENCE ON THE THIRD CIRCUIT

A. The Structure of the Role

Shortly before the end of each fiscal year, senior judges on my court inform the chief judge how many days or weeks during the upcoming year they desire to sit with panels, and indicate the times of the year that are most convenient for them. Neither senior judges nor active judges have any say, though, as to when and with whom they will participate in the decisional process of the court. Nor do the judges have any input as to which cases will be assigned to their panel of three. Not even the chief judge has the ability to control case assignment. The calendar team in the Office of the Third Circuit Clerk fashions the calendar, following the mantra that as soon as a particular appeal ripens—that is to say that as soon as all required briefs are filed—it is assigned to the next available panel. This is not a random pick-and-choose deal; the case goes to the next panel available on a first-ripened, first-assigned basis.[15]

Our court strives to have a total of about thirty weeks of panel sittings a year, with roughly forty cases in a four-day week.[16] The four-day-week tradition was a creation of three

15. *See Internal Operating Procedures of the United States Court of Appeals for the Third Circuit* 3 (U.S. Ct. of App. for the 3d Cir. 2010), http://www2.ca3.uscourts.gov/legacyfiles/IOP_2010_final2.pdf ("[F]ully briefed cases are randomly assigned by the clerk to a three-judge panel.") [hereinafter Third Circuit IOP] (accessed Jan. 29, 2014; copy on file with Journal of Appellate Practice and Process).

16. Once the court determines the number of weeks of merits panel sittings for a year, it then determines the number of weeks each active judge must participate. In my time on the court, it has vacillated between five and seven weeks, the present number being six. In 1969, my first full year in active service on the court, each judge had six weeks of sittings with fifteen cases on the merits each week for ninety cases that year, the national average being ninety-three. At that time, every motion was argued. Today we do not hear oral argument on motions, and for good reason. Active judges still sit for roughly the same number of weeks as they did in 1969, but consider more than twice the number of appeals per week than we did forty-four years ago.

judges appointed by President Franklin D. Roosevelt: Judge John Biggs, Jr., appointed in 1937; Judge Albert B. Maris, appointed in 1938; and Judge Herbert F. Goodrich, former dean of the University of Pennsylvania Law School, appointed in 1940.[17] These judges set the pattern of encouraging judges on the federal courts of appeals to serve as adjunct law professors and they made every Wednesday available for teaching, hence no oral arguments on Wednesdays. And our judges are still teaching today.[18]

B. The Expected Workload

The expected workload of each senior judge determines the size and composition of his or her staff. These determinations are made annually. Every senior judge who is designated and assigned to perform judicial duties is provided with suitable chambers and space for the judge's authorized staff.[19]

Active circuit judges are currently entitled to five staff positions—one or two secretaries and three or four law clerks. A senior circuit judge who agrees to accept a percentage of the average workload of an active judge may be certified for staff and chambers space on a pro-rata basis. On our court, for

17. For a short biography of each of these judges (and indeed, of every federal judge—active, senior, retired, and deceased), see Federal Judicial Center, *Biographical Directory of Federal Judges, 1789-Present*, http://www.fjc.gov/public/home.nsf/hisj (including a search function that accommodates searches focused on "nominating president, type of court, dates of service, and demographic groups" in addition to name searches) (accessed Jan. 29, 2014; copy on file with Journal of Appellate Practice and Process).

18. I served as an adjunct professor at the University of Pittsburgh School of Law from 1966 to 1986, first teaching Common Pleas Practice, then Federal Courts, Comparative Law, and finally Advocacy and Adjudication, in which the text was my book, *The Judicial Process: Text, Materials and Cases* (2d ed., West 1996). I also served from 1969 to 1984 on the faculty of the Senior Appellate Judges Seminar, sponsored by the Institute of Judicial Administration and housed at New York University School of Law in New York City. Judges from my court who have recently served as adjunct professors include Anthony J. Scirica at the University of Pennsylvania; D. Brooks Smith at Pennsylvania State University; D. Michael Fisher at the University of Pittsburgh; Michael A. Chagares at Seton Hall University; Kent A. Jordan at the University of Pennsylvania, Vanderbilt University, and Widener University; Thomas M. Hardiman at Duquesne University; Joseph A. Greenaway, Jr., at Cardozo School of Law and Columbia University; Thomas I. Vanaskie at Pennsylvania State University; and Patty Shwartz at Fordham University. And of course Dolores Sloviter was a professor of law at Temple University before joining our court.

19. *See* 28 U.S.C. §§ 294, 462, 712 (available at http://uscode.house.gov).

example, staffing for senior judges is determined by calculating the percentage of an active judge's workload performed by the senior judge and then applying that percentage as shown in Table 3.

Table 3
Staff Calculation for Senior Judges—Third Circuit

Workload	Chambers Staff Authorized
25% of Active Judge's Workload	Two (one assistant, one clerk)
40% of Active Judge's Workload	Three (one assistant, two clerks)
60% of Active Judge's Workload	Four (one or two assistants, two or three clerks)
80% of Active Judge's Workload	Five (one or two assistants, three or four clerks)

C. The Senior Judge's Role on the Court

Whatever the percentage of an active judge's workload handled by a senior judge, his or her role in a particular case is the same as that of any other judge on the panel to which the case is assigned. He or she must examine carefully the parties' briefs, and will of course also frequently refer to the appendix, which will ideally contain all relevant portions of the record. All judges, including senior judges, contribute to the decision of whether an appeal will be ordered for oral argument. Perhaps the only significant thing that a senior judge cannot do on a merits panel is preside over that panel; regardless of his or her years of

service to the court, the active judge with the most seniority presides.[20]

In addition to merits panels, senior judges may also participate on special one-year panels, including motions panels. These generally dispose of procedural requests by counsel such as petitions for writs of mandamus. Other special panels handle pro se and immigration cases, and death-penalty panels are another example.

One key difference between the roles of senior and active judges emerges when the court considers whether to hear a case en banc.[21] In these situations, only active judges are permitted to vote on whether to hear the case en banc. However, if a senior judge sits on a panel whose case is chosen for en banc rehearing, that senior judge may sit with the full court, vote on the disposition, and even write the majority opinion—or a dissenting opinion—on the ultimate resolution of the case.[22]

IV. MY EXPERIENCES AS A SENIOR CIRCUIT JUDGE

Having begun my federal court service at the age of forty-nine in 1968, I served for eighteen years as an active judge, and as Chief Judge of the Third Circuit from 1984 to 1986 before senior status in 1986 at the age of sixty-seven. Had my health permitted, I would have served as the chief judge for three more years—until I turned seventy in November 1989. And prior to my federal-judge service, I was a Pennsylvania Common Pleas Court judge from January 1962 to July 1968. Thus, before becoming a senior judge, I served over six years as a state trial judge and eighteen years as an active federal appellate judge.

A. Making the Decision to Take Senior Status

For me, taking senior status was not exactly a voluntary act; my ticker called the shots. Back in 1983, I underwent the

---

20. *Third Circuit IOP*, *supra* n. 15, at 3–5 (outlining procedures for oral argument).

21. Typically, en banc votes occur after a panel files an opinion and a party petitions the court for rehearing en banc. Less frequently, the court decides to hear a case en banc before the panel's opinion is ever filed.

22. *Third Circuit IOP*, *supra* n. 15, at 13–17 (setting out procedures for en banc consideration).

open-heart procedure popularly known as a "triple bypass," which permitted the blood to flow unimpeded from my aorta to my coronary artery. After a short recuperation, I went on my merry way carrying a full court schedule, then becoming chief judge and continuing to accept invitations to speak at bar and judicial meetings.

One of these speaking engagements brought me to New York City in the late spring of 1985 where everything went well during the day. But I spent the evening trying to figure out what I had eaten to cause the upset stomach and other discomfort that I was experiencing. I didn't realize what was happening until my wife Agatha and I stopped for lunch in Carlisle, Pennsylvania, about halfway through the drive back to Pittsburgh. In the process of leaving the car, I passed out and fell to the ground, but—*mirabile dictu*—a cardiac nurse was passing by in the parking lot. She administered aid and had me rushed by ambulance to the local hospital where, after giving them my history and being wired up for a cardiogram, I got the news: "That wasn't indigestion last night; you were having a heart attack." "Not so," I told the doctors in a smart-ass tone. "I don't get heart attacks anymore. I've had a triple bypass." The doctor gently informed me, and I paraphrase, "Bypass, chmyze pass, buddy, the cardiogram doesn't lie and it's corroborated by what you told us happened last night."

Nine days later, I left the Carlisle Hospital and headed for Pittsburgh where my cardiologists really laid it on, saying that all three of my coronary artery grafts had now become occluded and that the triple-bypass surgery had been a total failure. They also informed me that they could not operate on me again, because I was no longer a good surgical risk. And then they gave me news that would inalterably change my life. They told me that although they could give me medications, I could no longer live in Pittsburgh because the summers are too hot and the winters are too cold. They told me I needed to move to a more temperate climate, so I landed here in Santa Barbara, California, which is known as the American Riviera because of its wonderful Mediterranean climate and scenery.

And there's another happy chapter that followed a few years later. Through my medications, exercise and a good wife, my own body created a natural bypass with tiny coronary

capillaries naturally bypassing the obstructions in the main arteries, a phenomenon that the physicians call "collateral circulation." Several years later a Santa Barbara cardiologist told me that my collateral circulation created a natural bypass more effective than what would have resulted from an effective surgical triple bypass.

B. From Active to Inactive Senior Status

Since putting on the mantle of senior judge out here in Santa Barbara, I have always managed to sit every year with my home court, the Mighty Third Circuit in Philadelphia. In addition, I was probably maintaining something close to a full caseload back in the 1980s and 1990s because I was substantially designated with the Ninth Circuit—that humongous circuit in the far West that stretches from the state of Idaho thousands of miles westward across the Pacific to Guam and the Northern Mariana Islands. I was also designated to a lesser extent with the Fifth Circuit in New Orleans, the Seventh Circuit in Chicago, the Tenth Circuit in Denver and the Eleventh Circuit in Atlanta.

But now my traveling days are over: I sit only with the Third, and do so by means of a permanent state-of-the-art audio-visual system that cost the government less than one round-trip airfare, lodging, and meals for a one-week sitting with my home court in Philadelphia. I can see and hear counsel and my fellow judges, and they can all see and hear me, too.

In 2013, I was taking 47.2 percent of an active judge's caseload, and at my present age I was satisfied with this. As of 2014, I have now served fifty-two years as a judge—six years as a judge of the Court of Common Pleas of Allegheny County, Pennsylvania, and forty-six years as a circuit judge. This essay is my swan song as an active senior judge. In August 2014, I will be assuming inactive status, taking time to enjoy the company of my beautiful wife, Agatha, our children, and our grandchildren.

V. DAILY LIFE IN MY SENIOR-JUDGE CHAMBERS

A. My Senior-Judge Law Clerks

One of the joys of being a senior judge is the opportunity to continue mentoring the next generation of legal minds. Since assuming senior judge status in 1986, I have had forty-nine law clerks from twenty-seven law schools. At first they served two-year terms, but starting in 1996, I changed the term to one year. My two sons Rob and Greg, who are partners in law firms in Portland, Oregon, and Los Angeles, California, respectively, informally suggested to me that I should consider making the change. They told me that although two-year clerkships made my work easier with a senior clerk always available to train the newcomer, it was not fair to the clerks, most of whom leave law school with huge law-school and undergraduate debts. Allowing my clerks to move on sooner to the larger salaries offered by the big firms typically interested in court of appeals clerks made sense. Now I get two fresh law school graduates each year, and the training period has been reduced to the two-week overlap between one outgoing and one incoming clerk.

Each year, I consider and hire students from a wide range of law schools across the entire country, and these students go on to do fascinating work after they leave these chambers. Since becoming a senior judge, Berkeley has provided me with five clerks, more than any other school. Not far behind are Harvard and the University of Pennsylvania, with four each, and Notre Dame and Pepperdine, with three each. The only other schools to send me multiple clerks are the University of Pittsburgh, the University at Albany, Hastings, New York University, Northeastern, Duke, UCLA, and USC, with two each. My process for selecting clerks is unique and comprehensive, and necessarily so; we have a tight-knit chambers which is not in a courthouse and I need people who can "play nice." Table 4 contains a list of all the clerks who have served in my chambers since I took senior status in 1986.

Table 4 Judge Aldisert's Law Clerks while on Senior Status		
R. Scott Henderson	1985–1987	Pittsburgh
John Iole	1986–1987	Albany
John D. Goetz	1986–1988	Notre Dame
Caitlin M. Larsen	1987–1989	Hastings
Catherine S. Hill	1988–1990	Albany
Anne Marie Finch	1989–1991	Notre Dame
Susan S. Seemiller	1990–1992	Pepperdine
Glenn J. Dickinson	1991–1993	Cincinnati
Kathleen Vanderziel	1992–1994	Berkeley
Jason P. Baruch	1993–1995	New York University
Thomas O. Main	1994–1996	Northeastern
Gregory C. Pingree	1995–1997	Berkeley
Renee M. Bunker	1996–1997	Northeastern
Curt C. Cutting	1996–1997	Seattle
Robert J. Malionek	1997–1998	Boston College
Theodore A. Schroeder	1997–1998	Pittsburgh
Lisa J. Danetz	1998–1999	New York University
Jonathan L. Marsh	1998–1999	Villanova
Thomas P. Krzeminski	1999–2000	Rutgers
Paul F. Stone	1999–2000	Pennsylvania
Erin C. Framke	2000–2001	Berkeley
Maryann Surrick	2000–2001	Pennsylvania
Derek Brown	2001–2002	Pepperdine
Sean C. Flynn	2001–2002	Vermont
Michael A. Mugmon	2002–2003	Pennsylvania
Robert K. Simonds	2002–2003	Columbia
Edward L. Carter	2003–2004	Brigham Young
Erin Englebrecht Hannum	2003–2004	Emory
Nathaniel Pollock	2004–2005	Notre Dame
Alyssa Rower	2004–2005	Duke
Ryan Kirkpatrick	2005–2006	UCLA
James R. Stevens III	2005–2006	Duke
Stephen Clowney	2006–2007	Yale

Table 4 Judge Aldisert's Law Clerks while on Senior Status (continued)		
Jeremy Peterson	2006–2007	Harvard
Rita Lomio	2007–2008	Harvard
Anika Stucky	2007–2008	Oklahoma
Matthew Bartlett	2008–2009	Hastings
Meehan Rasch	2008–2009	UCLA
Candace Jackman	2009–2010	UC Davis
Leslie Goemaat	2009–2010	Harvard
Joseph C. Hansen	2010–2011	Minnesota
Patrick C. Bageant	2010–2011	Berkeley
Grace W. Liu	2010–Present	Pepperdine
Collin P. Wedel	2011–2012	Stanford
Kristina Katz Cercone	2011–2012	Harvard
Daniel S. Gershwin	2012–2013	Pennsylvania
Kathleen Jones Covarrubias	2012–2013	USC
David A. Ciarlo	2013–2014	USC
Fiona Y. Tang	2013–2014	Berkeley

B. My System for Working with My Law Clerks

I was chief judge of the Third Circuit during the formative years of the computer revolution that dawned a new day for federal courts. Prior to that, judges had to cut and paste corrections into draft opinions, and correspondence was sent by typewritten letter rather than by e-mail. As difficult as it may be to believe today, my chambers in Pittsburgh had no photocopier until the mid-1970s: My staff had to cross the street to use the equipment in the Office of the District Clerk. Today, we are outfitted with a plethora of technological gadgets to keep me connected to my colleagues across the country, and my chambers procedures have changed drastically. Without the assistance of my staff, I frequently fire off short e-mails to other judges from my computer. Many of the other traditionally secretarial tasks previously completed by a judicial assistant—such as typing edits to opinions—are now completed by me and my clerks. Indeed, when my last judicial assistant left her

position to enable her spouse to pursue a job opportunity elsewhere, I decided to make a staffing change. Rather than replacing my departed (and excellent) judicial assistant, I decided to hire a career law clerk, Grace W. Liu. In addition to performing traditional judicial-assistant functions, such as answering the phone, transcribing dictation, maintaining case-status sheets, circulating draft opinions, filing approved opinions, maintaining my calendar, and ordering supplies, she also performs the duties of a law clerk. She edits certain drafts of opinions for which I have written the first draft, and regularly drafts not-for-publication opinions (NPOs) from scratch. In this respect, she serves as a third chambers clerk. I was extremely fortunate to find Grace—a very intelligent and personable new graduate of a fine law school who, for a number of years now, has brought both a pleasant personality and professional competence to my daytime surroundings. Moreover, because my two regular clerks can have the pleasure of spending only one year "at the beach" in Santa Barbara with me, my permanent career clerk gives my chambers continuity in the management of opinions and court matters that would otherwise be difficult to accomplish.

I often call myself the Chief Law Clerk in chambers because I read all the briefs and appendices as soon as they arrive. In the chambers of some other judges, the clerks take the first crack at all the cases, but reading cases before the clerks examine them is a practice that I have followed for over twenty-five years. It is, in fact, generated by the feeling encapsulated in the expression "been there; done that." Having been a state and federal judge for over a half-century, I am totally acclimatized to many of the cases on the calendar. It is more efficient that I read the cases first because of my greater familiarity with the legal issues and the factual scenarios presented. Accordingly, I can efficiently read the briefs and the district court opinion in the typical case, come to a tentative conclusion, and proceed to dictate a bench memo. Were clerks fresh out of law school to make the first attempt in these cases, they would be facing something new to them, requiring them essentially to reinvent the wheel in every case, while I may have faced the problem in a particular case seven or eight times in the past five years. In this type of case, which I call a "slam dunk," it is more efficient for

me to conduct the first examination. Commonly, these are the cases that are clearly controlled by our precedent, that are not argued before the court, and will be terminated with an NPO.[23] In these cases my bench memos are succinct.

Where the issue is novel, I prepare a longer bench memo and label it as a "law clerk priority" with the understanding that the clerks are not bound by the tentative conclusions or analyses contained in my memo. They will bake the case from scratch, preparing a bench memo of their own, and devoting much more time to the case than I did. And of course, they are instructed to see me if they run into a problem while working on the case. More often than not, a few minutes with me will save them hours of time.

Because these are commonly the cases for which there will be argument and a for-publication opinion, the bench memo prepared by the clerk is a very formal document. It is written in elegant language with the understanding that if the opinion is assigned to me, we may be able to cannibalize that memo by lifting language from it and incorporating it into a draft opinion.

C. Cases Decided as a Nonagenarian

One must keep in mind that as a senior judge I would have received the same compensation if I had truly retired—closed my chambers, relinquished my support staff, and stayed at home. I might have played golf more than one day a week, or read all the books from my fifty-four-volume genuine-leather-bound Legal Classics Series, or traveled up and down the California coastline or mountain ranges or deserts with my wife, or played more with my grandchildren.

Instead, I chose to continue my judicial duties through my nineties because I simply love my work. To give you a sense of what keeps me bounding down the hallway to my chambers each weekday, I will now discuss the number and nature of the appeals that I have decided since I turned 90 in November 2009.

As a "young" senior judge, I maintained something close to a full caseload, counting sittings with my court as well as

23. Relatively early in the appellate process, the panel's presiding judge will assign to each of the three judges one-third of the calendar for which to write an NPO. Of all the cases on the typical calendar, roughly eighty to ninety percent fall into this category.

sittings with other courts of appeals across the country. In recent years, I have eased up on the sittings, carrying not quite half the caseload that an active judge would carry. Table 5 shows the number of merits-panel[24] cases I have reviewed in the last four years.

Table 5 **Judge Aldisert's Caseload** **90th Birthday to Date**	
Sitting	**Number of Appeals**
November 2009	16
March 2010	18
July 2010	16
October 2010	19
November 2010 (Ninth Circuit)	6
February 2011	20
June 2011	18
September 2011	9
October 2011	16
January 2012	9
April 2012	6
June 2012	13
September 2012	6
October 2012	6
February 2013	16
April 2013	7
June 2013	11
September 2013	7
TOTAL	**219**

What were these 219 cases all about? We had everything from Abstention to Torts. (I hoped that there would be a zoning case to truly go from A to Z, but alas, there was not.) Table 6, which is based on my notes about the cases, should give you an idea of what's been keeping me busy since turning 90.

24. As I noted above, I also sometimes serve on other "special" panels. The cases I have reviewed as part of these panels are not reflected in Table 5.

Table 6 Types of Cases Heard by Judge Aldisert 90th Birthday to Date[25]	
Abstention	3
Arbitration	4
Attorney's Fees	2
Bankruptcy	10
Civil Rights (42 U.S.C. § 1983)	21
Class Actions	4
Constitutional Law	24
1st Amendment	2
2nd Amendment	1
4th Amendment	12
5th Amendment	4
6th Amendment	4
Miranda	1
Contracts	7
Criminal Law (sufficiency of evidence, Constitutional challenges, and so on)	42
Criminal Sentencing	40
Employment Discrimination	18
Evidence	10
Federal Tort Claims Act	3
Frivolous Appeals (*Anders v. California*)	10
Habeas Corpus	14
Immigration	20
Immunity	1
Insurance	9
Jurisdiction	5
Jury Challenge	2

25. Astute readers (apply for a clerkship immediately!) will notice that the number of cases shown in Table 6 exceeds the 219 shown in Table 5. I have double-counted cases that presented issues spanning multiple areas of law. After more than fifty years on the bench, I think I'm entitled to a little judicial license.

Table 6 Types of Cases Heard by Judge Aldisert 90th Birthday to Date (continued)	
Jury Instruction	4
Lawyer Discipline	2
Miscellaneous Federal Statutes	9
Miscellaneous State Statutes	3
Partnership	2
Products Liability	4
RICO	2
Securities	4
Social Security	2
Torts	6

Leaping out of the statistics in Table 6 is the huge number of appeals in criminal cases. Forty-two appeals presented challenges to convictions under federal criminal law; forty appeals challenged the sentence issued by the district judge. There is a significant amount of overlap between these two categories, as many criminal defendants appeal both the underlying conviction and the sentence. Accordingly, over twenty percent of my caseload since November 2009 has consisted of appeals brought by criminal defendants dissatisfied with either their convictions or their sentences. In 2012, our court reversed the district court in only 5.8 percent of the criminal appeals. The national average was 6.4 percent.[26] The law in criminal cases is now rather stabilized, and most of these appeals are not listed for oral argument and do not merit a published opinion.

I am very interested in the proliferation of sentencing cases in particular because in my time as a lawyer from December 1946 to January 1962, and then as a state trial court and federal

26. *See* Administrative Office of the U.S. Courts, U.S. Courts of Appeals—*Appeals Terminated on the Merits, by Circuit, During the 12-Month Period Ending March 31, 2012*, http://www.uscourts.gov/Viewer.aspx?doc=/uscourtscourts/Statistics/FederalJudicialCaseloadStatistics/2012/tables/B05Mar12.pdf (accessed Jan. 29, 2014; copy on file with Journal of Appellate Practice and Process).

circuit judge until 1987, criminal defendants generally could not directly appeal from a criminal sentence, provided that the sentence did not exceed the statutory maximum.[27] The change was the result of the Sentencing Reform Act of 1984 (SRA), which took effect on November 1, 1987, providing a new system of Sentencing Guidelines and a statutory basis from which appellate courts could review the severity of a criminal sentence.[28] Then, in 2005, the Supreme Court concluded in *United States v. Booker*[29] that because the Guidelines were styled as mandatory, they violated the sixth amendment right to trial by jury. The Court excised those portions of the SRA that made the Guidelines mandatory and, accordingly, the Guidelines became advisory. Additionally, because the Guidelines were rendered advisory only, the Court articulated that appellate courts should review sentences for unreasonableness in light of the Guidelines, but did not explain a jurisdictional basis for this review. Justice Scalia, dissenting, was of the view that "[t]he worst feature of the scheme [now set forth by the Court] is that no one knows—and perhaps no one is meant to know—how advisory Guidelines and 'unreasonableness' review will function in practice."[30]

Thereafter, in *United States v. Cooper*,[31] the leading case in our court that interprets *Booker*, I dissented from the majority opinion, which concluded that an unreasonable sentence is "imposed in violation of law" under 18 U.S.C. § 3742(a)(1),[32] and that we therefore have statutory jurisdiction to review an unreasonable-sentence appeal under § 3742(a)(1).[33] I believed

27. For additional history on sentencing appeals, see generally Christopher A. Wyett, Student Author, *Appellate Review of Sentences*, 82 Geo. L.J. 1283 (1994) and Barbara A. Moulton, Student Author, *Post-Sentence Review*, 76 Geo. L.J. 1108 (1988).

28. Moulton, *supra* n. 27, at 1110.

29. 543 U.S. 220 (2005).

30. *Id.* at 311 (Scalia, J., dissenting in part).

31. 437 F.3d 324 (3d Cir. 2006).

32. *Id.* at 327 ("We believe an unreasonable sentence is 'imposed in violation of law' under 18 U.S.C. § 3742(a)(1).").

33. I rejected this argument, stating:

> By relying on § 3742(a)(1) for our jurisdiction, the majority implies that any unreasonable sentence is "imposed in violation of the law." Even assuming that this is correct—which I dispute—we would only have jurisdiction if we did, in fact, conclude that the sentence is unreasonable. *Cf. Drakes v. Zimski*, 240 F.3d 246, 247 (3d Cir. 2001) (observing that when jurisdiction depends on

then—and am still of the view—that after *Booker* the courts of appeals do not have jurisdiction to review a sentence's "reasonableness," except where the imposed sentence exceeds the statutory maximum. The Supreme Court has not yet had a case presenting the issue.

Meanwhile, forty—or eighteen percent—of the 219 appeals that I have considered since November 2009 present challenges to sentences, and many of these challenges are to the substantive reasonableness of the sentence. To be sure, it is rare that our court has reversed a sentence for substantive unreasonableness. Nevertheless, these cases clog our dockets, and in my view, unnecessarily so.

VI. MY OUTSIDE WRITING AS A SENIOR JUDGE: BOOKS, ARTICLES, AND ESSAYS

A. Books

As I have written previously, I believe that we senior judges have a responsibility to write on topics that interest us, from our lengthy perspective as members of the federal bench.[34] Heeding my own advice, since taking senior status, I have written six books—thirteen including subsequent editions—that reflect particular aspects of the law that have interested me. All of these books but one—the first edition of *The Judicial Process*—were written after I took senior status and moved from Pittsburgh to Santa Barbara. As a senior judge, I found that I had the time to do more than just keep up with a crushing caseload. My intention is to continue publishing as an inactive judge. Of course, the market value of intentions tends to diminish when you reach 94 years.

---

petitioner's success on the merits, we dismiss for lack of jurisdiction if petitioner's argument fails on the merits). Here, the majority concludes that Cooper's sentence is reasonable, but it nonetheless affirms the District Court rather than dismissing the appeal for lack of jurisdiction. By affirming rather than dismissing, the majority is exercising jurisdiction over an appeal from a sentence that was reasonable. Surely, the majority cannot mean to say that a *reasonable* sentence is also "imposed in violation of law" under § 3742(a)(1).

Id. at 340 n. 18 (Aldisert, J., concurring and dissenting) (emphasis in original).

34. *See* Ruggero J. Aldisert, *All Right, Retired Judges, Write!* 8 J. App. Prac. & Process 227 (2006).

My books, which I discuss in more detail below, include:

The Judicial Process: Text, Materials and Cases (2d ed., West 1996)

Logic for Lawyers: A Guide to Clear Legal Thinking (3d ed., NITA 1997)

Winning on Appeal: Better Briefs and Oral Argument (2d ed., NITA 2003)

Road to the Robes: A Federal Judge Recollects Young Years and Early Times (Author House 2006)

A Judge's Advice: 50 Years on the Bench (Carolina Academic Press 2011)

Opinion Writing (3d ed., Carolina Academic Press 2012).

1. Making and Justifying Judicial Decisions

A couple of my books reflect my decades-long interest in, if not fascination with, the twin theories of judicial decisionmaking and justifying decisions. As the years progressed, I discovered that the literature on the subject was sparse, if not nonexistent. A recurring phrase in my research—the judicial process, sometimes defined as "how judges decide cases and how they should decide them"—intrigued me, and yet I could not put my finger on an appropriate test.

This prompted me to write on the subject, and to continue doing so after I took senior status. The end result of this endeavor was my first book, *The Judicial Process: Text, Materials and Cases.* In the first edition I pointed out that

> [t]oday law is no more (nor less) than one of many methods of ordering and channeling the energies of society; its only measure is its effect on society. Thus, the path seems clear for unabashed and open policy determinations by the courts: functional and result-oriented if the impression conveyed is of a new jurisprudence; doctrinaire and

> conceptual if, upon close analysis, certain elements of this new jurisprudence disclose a fealty to older, more orthodox concepts.[35]

The next step was to explain how the courts can properly make these policy determinations, and I found the answer: logic in the law. Accordingly, I wrote *Logic for Lawyers: A Guide to Clear Legal Thinking*.[36] Deductive reasoning moves from the general to the particular; inductive reasoning moves from the particular to the general, described as inductive generalization, or from the particular to the particular or particulars, described as analogy. I believed when I wrote, and still do believe, that all judges and lawyers should have a strong foundation in logic, and that it's never too late to teach an old dog new tricks.

2. Writing Opinions and Briefs

The Judicial Process and *Logic for Lawyers* were just the start, though. While I was teaching *How to Write a Judicial Opinion*, at the Seminar for Senior Appellate Judges, sponsored by the Institute for Judicial Administration at New York University, the editor-in-chief of West Publishing Company commissioned me to write a book on how to write judicial opinions. The reduced caseload that generally comes with taking senior status allowed me the time to produce *Opinion Writing*, which was first published in 1990. West, and its successor Thomson-West, distributed the book free of charge to all federal judges and state appellate judges for about seventeen years thereafter. The book bears my name as author, and the words are indeed mine, but the content is the result of my interaction with about 300 appellate judges—including four justices of the United States Supreme Court—over a span of about twenty years. By 2012, it was in its third edition.

The most successful of my books today, *Winning on Appeal: Better Briefs and Oral Argument*, can be found as a text in law schools and a *vade mecum* in many law offices. It was first published in 1992. The late Professor Charles Alan Wright

35. *The Judicial Process* at 3. This book's foreword was written by the late Justice Harry A. Blackmun, best remembered, perhaps, as the author of *Roe v. Wade*.

36. The foreword to this book was written by the late Justice William J. Brennan, Jr., the magnificent philosopher of the Warren Court.

of the University of Texas, then known as America's foremost expert on federal courts, wrote in the foreword that I had been able to "distill" in my books the lessons I learned as a judge and "set them out for the instruction of [my] colleagues on the bench and of the lawyers who appear before the judges" and that I had included "[c]omments from state chief justices, federal chief justices, and from law clerks [that] add a broader perspective" to what I had observed.[37]

3. My Personal Recollections and Advice

Although I truly enjoyed writing about the law, for some time I also wanted to write about certain events in my life that took place before President Johnson nominated me to this judgeship. I had a story and finally decided to tell it in *Road to the Robes: A Federal Judge Recollects Young Years and Early Times.* That's what the book is all about: It's a collection of literary snapshots taken against the backdrop of important times in America—from the beginning of the Roaring Twenties to the turbulent and traumatic year of 1968. Its pages are like the story a grandfather or great-grandfather would tell his Baby Boomer kids or the generations that followed—a story about the early days when the great waves of immigrants came to Western Pennsylvania from Southern, Central and Eastern Europe to work in the coal mines and steel mills; a story about how the children of these immigrants made up a large portion of those who came to be known as the Greatest Generation; a story about how they came of age during the Depression and left home for three or four years to fight World War II in Africa, Europe, and the far reaches of the Pacific; and a story about the men and women who then returned to help propel this country into becoming the most powerful nation in the world.

Finally, I decided to create a single volume that would distill from my other writings the observations that I contributed to the body of American legal scholarship beginning in 1966. The result was *A Judge's Advice: 50 Years on the Bench*, which was published just prior to my golden anniversary as a judge in 2012. In *A Judge's Advice*, I sought to enrich the skills of

37. Ruggero J. Aldisert, *Winning on Appeal: Better Briefs and Oral Argument* xix–xx (NITA 2d ed. 2003).

lawyers, and to allow the reader to figuratively open the chambers door of a veteran member of the state and federal judiciary and sit down for an informal conversation. The voice is that of a nonagenarian who has rolled up his sleeves, leaned back in his chair, and said that he is willing to share observations on the law—both its anatomy and its philosophical purposes. The book includes observations drawing upon my experience since entering law school in September 1941—observations that have been set forth in five books and over fifty scholarly articles published here and in Europe.

B. Articles and Essays Written for Professional Publications

The articles and essays that I have written since taking senior status cover a lot of legal ground. They include:

Philosophy, Jurisprudence and Jurisprudential Temperament of Federal Judges, 20 Ind. L. Rev. 453 (1987)

A Tribute to Judge Weis, 49 U. Pitt. L. Rev. 917 (1988)

James Hunter III: The Lawyer in Judge's Clothing, 62 Temp. L. Rev. 807 (1989)

Precedent: What It Is and What It Isn't; When Do We Kiss It and When Do We Kill It? 17 Pepp. L. Rev. 605 (1990)

The English Appellate Process: A Distant Second to Our Own? A Book Review of Appellate Justice in England and the United States: A Comparative Analysis, 75 Judicature 48 (1991)

Goodbye Dean, and Welcome Back, Provost-Professor, 54 U. Pitt. L. Rev. 951 (1993) (tribute to Mark Nordenberg, now Chancellor of the University of Pittsburgh)

The Brennan Legacy: The Art of Judging, 32 Loy. L.A. L. Rev. 673 (1999)

A. Leon Higginbotham, Jr.: A Remembrance, 53 Rutgers L. Rev. 549 (2001)

All Right, Retired Judges, Write! 8 J. App. Prac. & Process 227 (2006)

Max Rosenn: An Ideal Appellate Judge, 154 U. Pa. L. Rev. 1025 (2006)

Perspective from the Bench on the Value of Clinical Appellate Training of Law Students, 75 Miss. L.J. 645 (2006)

Logic in Forensic Science in *Forensic Science and Law* 11 (Cyril H. Wecht and John T. Rago eds., CRC Press 2006)

Rat Race: Insider Advice on Landing Judicial Clerkships, 110 Penn. St. L. Rev. 835 (2006) (with Ryan C. Kirkpatrick and James R. Stevens III)

Logic for Law Students: How to Think Like a Lawyer, 69 U. Pitt. L. Rev. 1 (2007) (with Stephen Clowney and Jeremy D. Peterson)

Introduction in *The Third Circuit Appellate Practice Manual* xi (James C. Martin, Nancy Winkelman eds., PBI Press 2007)

Carol Los Mansmann: Daughter of Pittsburgh, 46 Duq. L. Rev. 15 (2007)

Remarks: Golden Pen Award Acceptance, 15 Leg. Writing xxi (2009)

The Honorable Ralph Cappy: Distinguished Keeper of the King's Bench Tradition, 47 Duq. L. Rev. 481 (2009)

Opinion Writing and Opinion Readers, 31 Cardozo L. Rev. 1 (2009) (with Meehan Rasch and Matthew P. Bartlett)

Judicial Declaration of Public Policy, 10 J. App. Prac. & Process 229 (2009).

VII. THE IMPORTANCE OF SENIOR STATUS FOR THE JUDGES THEMSELVES AND THE JUDICIARY AS A WHOLE

A. Continuing to Work is Good for Senior Judges

Looking back over a quarter of a century in senior-judge status, I can say that this experience has been inspiring, exciting, and exhilarating. I always knew that I would not enjoy the early retirement common to those who have held responsible positions in commercial and industrial institutions, which often begin before one reaches the age when I took senior status. Those retirements often feature a dismal farewell dinner and the presentation of an engraved timepiece—sometimes even a pocket watch. Thereafter, perhaps a trip to Europe with the family, via the pier (if you're the old-fashioned type and taking the Queen Mary) or JFK if you're going by air. Then you're back home, and you say to yourself, "What in the hell am I going to do now?" Too often the answer is nothing. And all too often the brain—which was exercised regularly from the first year of college until the final draft of the retirement-dinner speech was written—ceases to be used by the retiree.

That was not the life for me.

I am convinced that one's brain is a muscle, and desuetude can lead to deterioration. But stringent exercise of the thinking process by habitual or customary usage will strengthen the brain's capacity. "Use your head" is more than an elementary teacher's admonition to a pupil; it's a cry for judges to activate and stimulate brain cells through deductive and inductive reasoning. Thus, in my last twenty-six years as a senior judge I have been functioning four days a week and part of every weekend as a busy federal circuit judge—reading briefs, examining appendices, researching on Westlaw, reviewing draft opinions from other panel members, and writing and refining opinions. In other words, I perform the same work as an active

judge on any of the federal courts of appeals. The only difference? I work fewer cases per year.

And so, when asked what I like about being a senior judge, I generally respond with these three things: First, I appreciate that being a senior United States circuit judge requires me to keep exercising my mind. Second, I like belonging to an assemblage of judges that is not static; there are always new people to meet, new minds to appreciate, and new approaches to consider.[38] And finally, I love working with young people, having had forty-nine law clerks since taking senior status. These clerks entered my chambers as young students and emerged with a maturity beyond their ages as fine professionals.

B. The Continuing Work of Senior Judges is Good for the Federal Courts of Appeals

It is unfortunate that business retirees are generally let out to pasture too early. They are not permitted to work, cheek by jowl, with past colleagues and the men and women who have replaced them. Contributions from their years of experience with the company or law firm are not encouraged, not invited, and not accepted. By contrast, the federal judiciary puts to use veteran judges who still have much to contribute, and encourages the oldies to participate in the decisionmaking and decision-justifying processes of the district and appellate courts. The practice is alive and kicking. And the federal judiciary is better for it.

Appellate courts today are flooded with cases. We cannot say that the increase of appeals is directly related to the increase of trial court filings. Appeals have increased at a far greater rate than have district court filings.[39] Statistics demonstrating that senior circuit judges participate in one out of every five appeals to the federal courts of appeals may be the most significant data set forth in this essay; these statistics disclose and underscore the critical role that senior judges play in our judicial system.

38. Twenty-five new judges have joined my court since I took senior status and seven of these new colleagues have themselves now taken senior status. In fact, each active judge currently on my court joined after I took senior status.

39. For more on this topic see Ruggero J. Aldisert, *Opinion Writing* 6 (3d ed., Carolina Academic Press 2012) (citing the AO's *Annual Reports* from 1969 through 2008).

Pardon the aside, but the idea of the federal courts of appeals without senior judges brings to mind an expression used back when Hall of Fame pitcher Carl Hubbell faced a bases-loaded situation: "Hubbell's in trouble."[40] Without the ninety senior judges now helping to decide one-fifth of the cases in our federal courts of appeals—assisting the 167 active judges in the twelve regional courts—the federal judiciary would itself be in a lot of trouble.[41] Congress would have to create a substantial number of new active judge positions. Given that some important members of the Senate Judiciary Committee appear to be about as enamored of federal judges as they are of walking barefoot through poison ivy, and also that in the best of times today's Senate moves at glacial speed in approving replacements for active judges who have died, resigned, or taken senior status, a wholesale increase in the size of the federal judiciary is simply not in the cards. The alternative to using senior-status judges would be sizeable delays and backlogs measured not in months, but in years.

VIII. CONCLUDING REMARKS

For my first trial as a judge on Monday, January 15, 1962, I mounted the bench in Courtroom Number Three, Court of Common Pleas of Allegheny County, still located on the seventh floor of Pittsburgh's City-County Building. The case was *Gorshenhausen v. Griffin*, a trial by jury in a personal-injuries lawsuit between two casualty insurance companies. My minute book, one that I still have after these many years, indicates that I adjourned court at 3:30 p.m. on Monday and reconvened at 9:30 a.m. on Tuesday. We proceeded through the morning, adjourned for lunch, and then reconvened at 1:30 p.m. Thirty minutes later the case settled for the princely sum of $1200.00. It had cost the taxpayers much more to process this private quarrel.

I now fast-forward fifty-one years to September 2013 for the latest case I had as a judge before submitting this manuscript: *Ohler v. Lamas*. It is an appeal from the United

40. If you are too young to remember Hubbell, suffice it to say that he struck out five Hall of Fame batters in succession during the 1934 All-Star game: Babe Ruth, Lou Gehrig, Jimmie Foxx, Al Simmons, and Joe Cronin.

41. *See Court of Appeals Summary—2013*, *supra* n. 14.

States District Court for the Western District of Pennsylvania (Pittsburgh) involving the denial of a petition for habeas corpus. This is a homicide case originating in the Court of Common Pleas, Somerset County, Pennsylvania, in which the appellant entered a plea of guilty to third-degree murder, was sentenced to a term of twenty-to-forty years, unsuccessfully exhausted claims for relief in the Pennsylvania state courts, unsuccessfully petitioned for habeas relief in the district court and now, with new court-appointed counsel to represent him, appeals to us arguing the incompetence of his counsel at trial.

In between these two cases—my first and one of my latest—were thousands of controversies, civil and criminal, state and federal, that required a studied decision on my part. Even in my tenth decade, in the sunset of my senior-status years, I still look forward to the multi-faceted challenges of the day. And I do this as a senior circuit judge, the finest job the American judiciary has to offer.

If this nonagenarian can be accused of suggesting that the institution of senior judge status is not only important, but now constitutes an absolutely essential fixture in the modern federal appellate architecture, I cheerfully plead guilty to what I consider a unique concept of "retirement"—utilizing the competences of men and women who have been on the front lines of court battles for decades and bear the figurative scars emanating from thousands of skirmishes.